

Questions have been raised regarding the requirement that the District adopt the Comprehensive Health and Physical Education standards issued by the Department of Education. The following provides an overview of the statutes, regulations and guidance which clearly illustrate a requirement for the District to do so.

N.J.S.A. 18A:7F-24 provides:

a. The State Board of Education shall review and update the core curriculum content standards every five years. The standards shall ensure that all children are provided the educational opportunity needed to equip them for the role of citizen and labor market competitor.

The Commissioner of Education shall develop and establish, through the report issued pursuant to subsection b. of this section, efficiency standards which define the types of programs, services, activities, and materials necessary to achieve a thorough and efficient education.

N.J.A.C. 6A:8-1 et seq. establishes the obligation of district boards of education to adopt the core curriculum content standards, providing that:

(b) District boards of education **shall ensure** that standards, assessments, curriculum, instruction, and professional development are aligned in a local support system that enables all students to achieve 21st century outcomes through the establishment of student-centered learning environments that provide opportunities for academically diverse students to:

1. Learn in meaningful, real-world contexts through rigorous and relevant curriculum that promotes engagement in learning by addressing varying college and career goals;
2. Access and use quality learning tools, technologies, and resources;
3. Become self directed seekers of knowledge able to evaluate, apply, and create new knowledge in varying contexts; and

N.J.A.C. 6A:8-1.1

N.J.A.C. 6A:8-1.2 further provides:

(c) District boards of education **shall align** their curriculum and instructional methodologies to assist all students in achieving the NJSLs and to prepare all students for college and career.

Additionally, N.J.A.C. 6A:8-1.3 provides:

New Jersey Student Learning Standards" or "NJSLs" means standards adopted by the State Board of Education on May 1, 1996, and as thereafter revised by the State Board, and the Common Core State Standards adopted by the State Board on June 16, 2010, and as

thereafter revised by the State Board, that describe **the knowledge and skills all New Jersey students are expected to acquire** by benchmark grades in the following areas: English language arts; mathematics; science; social studies; visual and performing arts; comprehensive health and physical education; world languages; technology; and 21st career life and careers. **The standards are established for the provision of a thorough and efficient education** pursuant to N.J.S.A. 18A:7F-46 and as a basis for the evaluation of school districts in accordance with N.J.A.C. 6A:30.

In an effort to further clarify the obligation of school districts to adopt the health and physical education standards, the New Jersey Department of Education issued guidance requiring that Districts adopt a Comprehensive Health and Physical Education standards by **September, 2022**. It noted that the adopted curriculum must comply with the 2020 New Jersey Student Learning Standards. <https://www.nj.gov/education/cccs/2020/>.

Should districts fail to **obey the direction** of the State board to adopt the standards by September, 2022, applicable statute provides the Commissioner with the ability to withhold funds payable to the State. Specifically, N.J.S.A. 18A:55-2 provides in relevant part that “the Commissioner shall direct the State treasurer to withhold funds payable by the State from any district which fails to obey the law or the rules or directions of the State board or the Commissioner”. The conclusion that funds could be withhold for failing to adopt the curriculum as required is consistent not only with statute but with recent statements from the DOE which indicate an intent to penalize districts that fail to adopt the standards.

Failure to adopt the standards could not only have significant ramifications for the District, but for individual board members as well. A “no” vote could result in an ethics complaint being filed. Specifically, the School Ethics Act provides in relevant part:

“A school board member shall abide by the following Code of Ethics for School Board Members:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

N.J.S.A. 18A:12-24.1

In recognition of the requirements that board members refrain from actions that “may compromise the board” and enforce all “laws, rules and regulations of the State Board of Education”, which include those set forth above, because districts are required to adopt the standards issued by the State Board of Education, failure to adopt the required curriculum could lead to a claim that the Code of Ethics has been violated. Additionally, because a failure to adopt the standards could result in a withholding of state funds or other penalties, an ethics complaint could be filed claiming that the failure to do so had compromised the board.

Finally, questions have been raised regarding the ability of parents to “opt-out” of the sexual education curriculum. That right is provided by statute. Specifically, N.J.S.A. 18A:35-4.7 provides that: “Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom.” There is not however a statutory right to “opt-in”.